



March 27, 2009

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## ENGROSSED HOUSE BILL No. 1077

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DIGEST OF HB 1077 (Updated March 25, 2009 1:38 pm - DI 106)

**Citations Affected:** IC 32-28; IC 32-33.

**Synopsis:** Special tool and common law liens. Establishes possession and ownership rights in special tools used for the fabrication of certain parts. Specifies procedures that must be used to establish a lien on certain special tools, and provides that a lienholder is entitled to court costs and reasonable attorney's fees incurred while enforcing the lienholder's rights. Provides a filing deadline for a common law lien, and specifies that a common law lien is void under certain circumstances.

**Effective:** Upon passage.

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### Cheatham, Smith M

(SENATE SPONSORS — WALKER, LEWIS, LANANE)

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January 7, 2009, read first time and referred to Committee on Judiciary.  
February 17, 2009, amended, reported — Do Pass.  
February 20, 2009, read second time, amended, ordered engrossed. Engrossed.  
February 23, 2009, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 24, 2009, read first time and referred to Committee on Judiciary.  
March 26, 2009, amended, reported favorably — Do Pass.

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EH 1077—LS 6393/DI 69+



March 27, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1077

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A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 32-28-13-4 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This chapter  
3 provides the procedure for filing and releasing a common law lien.  
4 (b) This chapter does not create a common law lien. A common law  
5 lien does not exist against the property of a public official for the  
6 performance or nonperformance of the public official's official duty. A  
7 person asserting a common law lien must prove the existence of the  
8 lien as prescribed by the common law of Indiana.  
9 (c) **Unless a common law lien becomes void at an earlier date**  
10 **under section 6(b) of this chapter, a common law lien is void if the**  
11 **common law lienholder fails to commence a suit on the common**  
12 **law lien within one hundred eighty (180) days after the date the**  
13 **common law lien is recorded under this chapter.**  
14 SECTION 2. IC 32-28-13-5 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A person  
16 who wishes to record a common law lien must file with the county  
17 recorder of a county in which the real or personal property against

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which the common law lien is to be held is located a statement of the person's intention to hold a common law lien against the real or personal property. **The statement must be recorded not later than sixty (60) days after the date of the last service provided by the person who wishes to record the lien.**

(b) A statement of intention to hold a common law lien must meet all of the following requirements:

(1) Except as provided in subsection (d), the person filing the statement must swear or affirm that the facts contained in the statement are true to the best of the person's knowledge.

(2) The statement must be filed in duplicate.

(3) The statement must set forth:

(A) the amount claimed to be owed by the property owner to the lienholder;

(B) the name and address of the lienholder;

(C) the name of the property owner;

(D) the last address of the property owner as shown on the property tax records of the county;

(E) the legal description and street and number, if any, of the real property against which the common law lien is filed;

(F) a full description of the personal property against which the common law lien is filed, including the location of the personal property; and

(G) the legal basis upon which the person asserts the right to hold the common law lien.

(c) The recorder shall send by first class mail one (1) of the duplicate statements filed under subsection (b) to the property owner at the address listed in the statement within three (3) business days after the statement is recorded. The county recorder shall record the date the statement is mailed to the property owner under this subsection. The county recorder shall collect a fee of two dollars (\$2) from the lienholder for each statement that is mailed under this subsection.

(d) The statement of intention to hold a common law lien required under subsection (b) may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

SECTION 3. IC 32-33-16-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 0.5. This chapter does not apply to a special tool under IC 32-33-20.**

SECTION 4. IC 32-33-20 IS ADDED TO THE INDIANA CODE

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AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
UPON PASSAGE]:

**Chapter 20. Special Tool Liens**

**Sec. 1.** As used in this chapter, "customer" means a person who:

(1) causes a special tool builder to design, develop,  
manufacture, assemble for sale, or otherwise make a special  
tool; or

(2) causes an end user to use a special tool.

**Sec. 2.** As used in this chapter, "end user" means a person who  
uses a special tool as part of the person's manufacturing process.

**Sec. 3.** As used in this chapter, "special tool" means tools, dies,  
jigs, gauges, gauging fixtures, special machinery, cutting tools,  
injection molds, or metal castings used in the design, development,  
manufacture, assembly or fabrication of parts.

**Sec. 4.** As used in this chapter, "special tool builder" means a  
person who designs, develops, manufactures, or assembles special  
tools for sale.

**Sec. 5 (a)** This section does not apply if an end user retains title  
to and possession of a special tool.

(b) Unless otherwise agreed in writing, if a customer does not  
claim possession of a special tool from an end user within three (3)  
years after the date the special tool is last used by the end user, at  
the option of the end user, all rights, title, and interest in the special  
tool may be transferred by operation of law to the end user for the  
purpose of destroying the special tool.

(c) After the three (3) year period described in subsection (b)  
expires, if an end user chooses to have all rights, title, and interest  
in a special tool transferred to the end user, the end user shall send  
written notice by registered mail, return receipt requested, to:

(1) an address designated in writing by the customer; or

(2) if the customer has not designated an address in writing,  
to the customer's last known address;

that indicates the end user intends to terminate the customer's  
rights, title, and interest in the special tool by having all rights,  
title, and interest in the special tool transferred to the end user  
under this section.

(d) If a customer does not:

(1) claim possession of the special tool within one hundred  
twenty (120) days after the date the end user receives the  
return receipt of the notice sent under subsection (c); or

(2) make other arrangements with the end user for storage of  
the special tool within one hundred twenty (120) days after

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the date the end user receives the return receipt of the notice sent under subsection (c); all rights, title, and interest of the customer in the special tool are transferred by operation of law to the end user for the purpose of destroying the special tool.

(e) This section may not be construed to:

(1) affect a right of a customer under a:

(A) federal patent or copyright law; or

(B) state or federal law concerning unfair competition; or

(2) grant a customer rights, title, or interest in a special tool.

Sec. 6. (a) An end user has a lien, dependent on possession, on any special tool in the end user's possession belonging to a customer for the amount due the end user from the customer for:

(1) metal fabrication work performed with the special tool; or

(2) making or improving the special tool.

(b) An end user may retain possession of the special tool until the amount due is paid.

Sec. 7. (a) Before enforcing a lien created under section 6 of this chapter, the end user must give written notice to the customer that is:

(1) delivered personally; or

(2) sent by registered mail to the last known address of the customer.

(b) The notice required under subsection (a) must:

(1) state that a lien is claimed for the amount due for:

(A) metal fabrication work; or

(B) making or improving the special tool; and

(2) include a demand for payment.

Sec. 8. If an end user has not been paid the amount due within ninety (90) days after the date the notice is received by the customer as provided in section 7 of this chapter, the end user may sell the special tool at a public auction if:

(1) the special tool is still in the end user's possession; and

(2) the end user complies with section 9 of this chapter.

Sec. 9. (a) Before an end user may sell a special tool, the end user must notify:

(1) the customer; and

(2) any person whose security interest in the special tool is perfected by filing;

by registered mail, return receipt requested, that the end user intends to sell the special tool.

(b) The notice required under subsection (a) must include the

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following information:

- (1) The end user's intention to sell the special tool sixty (60) days after the date the customer receives the notice.
- (2) A description of the special tool to be sold.
- (3) The date, time, and place of the sale.
- (4) An itemized statement for the amount due.
- (5) A statement that the product produced by the special tool complies with the quality and quantity ordered.

(c) If:

- (1) there is no return of the receipt of the mailing; or
- (2) the postal service returns the notice as being undeliverable;

the end user shall publish notice of the end user's intention to sell the special tool in a newspaper of general circulation in the place where the special tool is being held for sale by the end user and in the place of the customer's last known address. The notice must include a description of the special tool and the name of the customer.

(d) If a customer disagrees that the product produced by the special tool complies with the quality and quantity ordered, the customer shall notify the end user in writing by registered mail, return receipt requested, that the product produced by the special tool did not meet the quality or quantity of product ordered. An end user who receives a notice under this subsection may not sell the special tool until the dispute is resolved.

Sec. 10. (a) The proceeds of a sale of a special tool under section 8 of this chapter shall be paid as follows:

- (1) The proceeds shall be paid first to the prior lienholder who has a perfected lien in an amount sufficient to satisfy the lienholder's interest.
- (2) Any remainder after payment is made under subdivision (1) shall be paid to the end user who possesses a lien under this chapter in an amount sufficient to extinguish that interest.
- (3) Any remainder after payment is made under subdivision (2) shall be paid to the customer.

(b) A sale may not be made under this chapter if it would violate a right a customer has under federal patent or copyright law.

Sec. 11. (a) A special tool builder has an unperfected purchase money security interest under IC 26-1-9.1 on a special tool that the special tool builder fabricates, repairs, or modifies.

(b) The amount of the lien is the amount that a customer or end user owes the special tool builder for the fabrication, repair, or

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modification of the special tool.

(c) A special tool builder may perfect its purchase money security interest in a special tool by filing a financing statement in accordance with IC 26-1-9.1-317(e).

**Sec. 12.** To enforce a lien that attaches under section 11 of this chapter, a special tool builder must give notice of the lien in writing to the customer and the end user. The notice must:

(1) be delivered personally or by certified mail, return receipt requested, to the last known address of the customer and to the last known address of the end user; and

(2) state:

(A) that a lien is claimed;

(B) the amount that the special tool builder claims it is owed for fabrication, repair, or modification of the special tool; and

(C) a demand for payment.

**Sec. 13.** (a) Subject to section 14 of this chapter, if a special tool builder has not been paid the amount claimed in the notice required under section 12 of this chapter within ninety (90) days after the date the notice required under section 12 of this chapter has been received by the customer and the end user, the special tool builder:

(1) has a right to possession of the special tool; and

(2) may enforce the right to possession of the special tool by judgment, foreclosure, or any available judicial procedure.

(b) The special tool builder may do one (1) or more of the following:

(1) Take possession of the special tool. The special tool builder may take possession without judicial process if possession can be taken without breach of the peace.

(2) Sell the special tool in a public auction.

(c) A special tool builder is entitled to court costs and reasonable attorney's fees for expenses incurred under this section.

**Sec. 14.** (a) Before a special tool builder may enforce its security interest in a special tool for which the special tool builder claims a security interest under this chapter and for which the required notice has been sent under section 12 of this chapter, the special tool builder must notify the customer, the end user, and all other persons that have a perfected security interest in the special tool by certified mail, return receipt requested, of all the following:

(1) The special tool builder's intention to sell the special tool sixty (60) days after the receipt of the notice.

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- (2) A description of the special tool to be sold.
- (3) The last known location of the special tool.
- (4) The time and place of the sale.
- (5) An itemized statement of the amount due.
- (6) A statement that the special tool was accepted and the acceptance was not subsequently rejected.

(b) If:

- (1) there is no return of the receipt of the mailing; or
- (2) the postal service returns the notice as being undeliverable;

the special tool builder shall publish notice of the special tool builder's intention to sell the special tool in a newspaper of general circulation in the place where the special tool was last known to be located, in the place of the customer's last known address, and in the place of the end user's last known address. The published notice must include a description of the special tool and the name of the customer and the end user.

(c) If a customer or an end user against whom the lien is asserted disagrees that the special tool was accepted or that the acceptance was not subsequently rejected, the customer or end user shall notify the special tool builder in writing by certified mail, return receipt requested, that the special tool was not accepted or that the acceptance was subsequently rejected. A special tool builder who receives notice under this subsection may not sell the special tool until the dispute is resolved.

**Sec. 15. (a) The proceeds of a sale of a special tool under section 13 of this chapter shall be paid as follows:**

- (1) The proceeds shall be paid first to the prior lienholder who has a perfected lien in an amount sufficient to satisfy the lienholder's interest.
- (2) Any remainder after payment is made under subdivision (1) shall be paid to the special tool builder who possesses a lien under this chapter in an amount sufficient to extinguish that interest.
- (3) Any remainder after payment is made under subdivision (2) shall be paid to the customer.

(b) A sale may not be made or possession may not be obtained under section 13 of this chapter if the sale or possession would violate any right a customer or an end user has under federal patent, bankruptcy, or copyright law.

**SECTION 5. An emergency is declared for this act.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1077, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 2 with "[EFFECTIVE UPON PASSAGE]".

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 32-28-13-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This chapter provides the procedure for filing and releasing a common law lien.

(b) This chapter does not create a common law lien. A common law lien does not exist against the property of a public official for the performance or nonperformance of the public official's official duty. A person asserting a common law lien must prove the existence of the lien as prescribed by the common law of Indiana.

**(c) Unless a common law lien becomes void at an earlier date under section 6(b) of this chapter, a common law lien is void if the common law lienholder fails to commence a suit on the common law lien within one hundred eighty (180) days after the date the common law lien is recorded under this chapter."**

Page 1, line 13, delete "metal".

Page 1, line 15, delete "metal".

Page 2, line 2, after "tools," insert **"injection molds,"**.

Page 4, line 28, delete "shall" and insert **"may"**.

Page 4, line 31, delete "shall" and insert **"may"**.

Page 4, line 32, delete "the IC 26-1-9.1-502." and insert **"IC 26-1-9.1-502 to perfect the special tool builder's lien under subsection (c)."**

Page 4, line 36, delete ":" and insert **"information that the special tool builder is required to record on the special tool under subsection (a) constitutes actual and constructive notice of the special tool builder's lien on the special tool."**

Page 4, delete lines 37 through 41.

Page 6, after line 41, begin a new paragraph and insert:

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"SECTION 4. **An emergency is declared for this act.**"

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1077 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 11, nays 0.

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#### HOUSE MOTION

Mr. Speaker: I move that House Bill 1077 be amended to read as follows:

Page 2, line 8, delete "for use in the design, development, manufacture," and insert **"; or"**.

Page 2, delete line 9.

Page 2, line 10, delete "to design, develop," and insert ".".

Page 2, delete line 11.

Page 2, line 16, delete "manufactured by a special tool" and insert **"used in the design, development, manufacture, assembly or fabrication of parts."**

Page 2, delete line 17.

Page 4, line 29, delete "If" and insert **"The proceeds of"**.

Page 4, line 30, delete "is for a sum greater than the amount of the lien:" and insert **"shall be paid as follows:"**.

Page 4, line 31, after "(1)" delete "the" and insert **"The"**.

Page 4, line 33, delete ";" and insert ".".

Page 4, line 34, delete "any" and insert **"Any"**.

Page 4, line 37, delete "; and" and insert ".".

Page 4, line 38, delete "any" and insert **"Any"**.

Page 4, line 42, delete "may permanently record on" and insert **"has an unperfected purchase money security interest under IC 26-1-9.1 on a"**.

Page 5, line 1, delete "every".

Page 5, line 2, delete "the special tool builder's name and address." and insert ".".

Page 5, delete lines 3 through 26, begin a new paragraph and insert:

**"(b) The amount of the lien is the amount that a customer or end user owes the special tool builder for the fabrication, repair, or modification of the special tool.**

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(c) A special tool builder may perfect its purchase money security interest in a special tool by filing a financing statement in accordance with IC 26-1-9.1-317(e).".

Page 6, line 12, delete "sell" and insert "enforce its security interest in".

Page 6, line 13, delete "a lien is claimed" and insert "the special tool builder claims a security interest under this chapter".

Page 6, line 16, delete "under".

Page 6, line 17, delete "IC 26-1-9.1-501 through IC 26-1-9.1-527,".

Page 7, delete lines 4 through 9, begin a new paragraph and insert:  
**"Sec. 15. (a) The proceeds of a sale of a special tool under section 13 of this chapter shall be paid as follows:**

**(1) The proceeds shall be paid first to the prior lienholder who has a perfected lien in an amount sufficient to satisfy the lienholder's interest.**

**(2) Any remainder after payment is made under subdivision (1) shall be paid to the special tool builder who possesses a lien under this chapter in an amount sufficient to extinguish that interest.**

**(3) Any remainder after payment is made under subdivision (2) shall be paid to the customer."**

(Reference is to HB 1077 as printed February 18, 2009.)

CHEATHAM

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1077, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between lines 13 and 14, begin a new paragraph and insert:

**"SECTION 2. IC 32-28-13-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A person who wishes to record a common law lien must file with the county recorder of a county in which the real or personal property against which the common law lien is to be held is located a statement of the person's intention to hold a common law lien against the real or personal property. The statement must be recorded not later than sixty (60) days after the date of the last service provided by the person who wishes to record the lien.**

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(b) A statement of intention to hold a common law lien must meet all of the following requirements:

- (1) Except as provided in subsection (d), the person filing the statement must swear or affirm that the facts contained in the statement are true to the best of the person's knowledge.
- (2) The statement must be filed in duplicate.
- (3) The statement must set forth:
  - (A) the amount claimed to be owed by the property owner to the lienholder;
  - (B) the name and address of the lienholder;
  - (C) the name of the property owner;
  - (D) the last address of the property owner as shown on the property tax records of the county;
  - (E) the legal description and street and number, if any, of the real property against which the common law lien is filed;
  - (F) a full description of the personal property against which the common law lien is filed, including the location of the personal property; and
  - (G) the legal basis upon which the person asserts the right to hold the common law lien.

(c) The recorder shall send by first class mail one (1) of the duplicate statements filed under subsection (b) to the property owner at the address listed in the statement within three (3) business days after the statement is recorded. The county recorder shall record the date the statement is mailed to the property owner under this subsection. The county recorder shall collect a fee of two dollars (\$2) from the lienholder for each statement that is mailed under this subsection.

(d) The statement of intention to hold a common law lien required under subsection (b) may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court."

Page 5, between lines 32 and 33, begin a new paragraph and insert:  
**"(c) A special tool builder is entitled to court costs and**

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**reasonable attorney's fees for expenses incurred under this section."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1077 as reprinted February 21, 2009.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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